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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

WILLIAM HANAN,	)	Case No. 5:18-cv-01711-RSWL-KK
	)	
Plaintiff,	)	Hon. Ronald S.W. Lew
	)	
vs.	)	<b>[PROPOSED] PROTECTIVE</b>
	)	<b>ORDER</b>
BMW FINANCIAL SERVICES, N.A.,	)	
LLC,	)	[DISCOVERY MATTER: Referred to
	)	Magistrate Judge Kenly Kiya Kato]
Defendant.	)	
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BMW FINANCIAL SERVICES, N.A.,	)	
LLC,	)	
	)	
	)	
Counter-Claimant,	)	
	)	
vs.	)	
	)	
WILLIAM HANAN,	)	
	)	
Counter-Defendant.	)	
	)	
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1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

B. GOOD CAUSE STATEMENT

This action is likely to involve financial and/or proprietary information for which special protection from public disclosure and from use for any purpose other than prosecution of this action is warranted. Such confidential and proprietary materials and information consist of, among other things, confidential financial information including information implicating privacy rights of third parties), information regarding confidential business practices, commercial information, information otherwise generally unavailable to the public, or which may be privileged or otherwise protected from disclosure under state or federal statutes, court rules, case decisions, or common law. Accordingly, to expedite the flow of information, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the parties are entitled to keep confidential, to ensure that the parties are permitted reasonable necessary uses of

such material in preparation for and in the conduct of trial, to address their handling at the end of the litigation, and serve the ends of justice, a protective order for such information is justified in this matter. It is the intent of the parties that information will not be designated as confidential for tactical reasons and that nothing be so designated without a good faith belief that it has been maintained in a confidential, non-public manner, and there is good cause why it should not be part of the public record of this case.

2. DEFINITIONS

2.1 Action: William Hanan v. BMW Financial Services NA, LLC, Case No. 5:18-cv-01711-RSWL-KK.

2.2 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their support staff).

2.5 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

2.6 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this Action.

2.8 House Counsel: attorneys who are employees of a party to this Action. House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.9 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.10 Outside Counsel of Record: attorneys who are not employees of a party to this Action but are retained to represent or advise a party to this Action and have appeared in this Action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party, and includes support staff.

2.11 Party: any party to this Action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this Action.

2.13 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.14 Protected Material: any Disclosure or Discovery Material that is designated as "CONFIDENTIAL."

2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

1 3. SCOPE

2 The protections conferred by this Stipulation and Order cover not only  
3 Protected Material (as defined above), but also (1) any information copied or  
4 extracted from Protected Material; (2) all copies, excerpts, summaries, or  
5 compilations of Protected Material; and (3) any testimony, conversations, or  
6 presentations by Parties or their Counsel that might reveal Protected Material.

7 Any use of Protected Material at trial shall be governed by the orders of the  
8 trial judge. This Order does not govern the use of Protected Material at trial.

9 4. DURATION

10 Even after final disposition of this litigation, the confidentiality obligations  
11 imposed by this Order shall remain in effect until a Designating Party agrees  
12 otherwise in writing or a court order otherwise directs. Final disposition shall be  
13 deemed to be the later of (1) dismissal of all claims and defenses in this action, with  
14 or without prejudice; and (2) final judgment herein after the completion and  
15 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,  
16 including the time limits for filing any motions or applications for extension of time  
17 pursuant to applicable law.

18 5. DESIGNATING PROTECTED MATERIAL

19 5.1 Exercise of Restraint and Care in Designating Material for Protection.

20 Each Party or Non-Party that designates information or items for protection under  
21 this Order must take care to limit any such designation to specific material that  
22 qualifies under the appropriate standards. The Designating Party must designate for  
23 protection only those parts of material, documents, items, or oral or written  
24 communications that qualify – so that other portions of the material, documents,  
25 items, or communications for which protection is not warranted are not swept  
26 unjustifiably within the ambit of this Order.

1 Mass, indiscriminate, or routinized designations are prohibited. Designations  
2 that are shown to be clearly unjustified or that have been made for an improper  
3 purpose (e.g., to unnecessarily encumber or retard the case development process or to  
4 impose unnecessary expenses and burdens on other parties) expose the Designating  
5 Party to sanctions.

6 If it comes to a Designating Party's attention that information or items that it  
7 designated for protection do not qualify for protection, that Designating Party must  
8 promptly notify all other Parties that it is withdrawing the mistaken designation.

9 5.2 Manner and Timing of Designations. Except as otherwise provided in  
10 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
11 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
12 under this Order must be clearly so designated before the material is disclosed or  
13 produced.

14 Designation in conformity with this Order requires:

15 (a) for information in documentary form (e.g., paper or electronic  
16 documents, but excluding transcripts of depositions or other pretrial or trial  
17 proceedings), that the Producing Party affix the legend "CONFIDENTIAL" to each  
18 page that contains protected material. If the Producing Party is unable to affix the  
19 legend "CONFIDENTIAL" to each page of an electronic document, the Producing  
20 Party may include the legend "CONFIDENTIAL" within the file name of the  
21 electronic document. If only a portion or portions of the material on a page qualifies  
22 for protection, the Producing Party also must clearly identify the protected portion(s)  
23 (e.g., by making appropriate markings in the margins).

24 A Party or Non-Party that makes original documents or materials available for  
25 inspection need not designate them for protection until after the inspecting Party has  
26 indicated which material it would like copied and produced. During the inspection  
27 and before the designation, all of the material made available for inspection shall be  
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1 deemed “CONFIDENTIAL.” After the inspecting Party has identified the  
2 documents it wants copied and produced, the Producing Party must determine which  
3 documents, or portions thereof, qualify for protection under this Order. Then, before  
4 producing the specified documents, the Producing Party must affix the  
5 “CONFIDENTIAL” legend to each page that contains Protected Material. If only a  
6 portion or portions of the material on a page qualifies for protection, the Producing  
7 Party also must clearly identify the protected portion(s) (e.g., by making appropriate  
8 markings in the margins).

9 (b) for testimony given in deposition or in other pretrial or trial  
10 proceedings, that the Designating Party identify on the record, before the close of the  
11 deposition, hearing, or other proceeding, all protected testimony.

12 (c) for information produced in some form other than documentary and  
13 for any other tangible items, that the Producing Party affix in a prominent place on  
14 the exterior of the container or containers in which the information or item is stored  
15 the legend “CONFIDENTIAL.” If only a portion or portions of the information or  
16 item warrant protection, the Producing Party, to the extent practicable, shall identify  
17 the protected portion(s).

18 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
19 failure to designate qualified information or items does not, standing alone, waive the  
20 Designating Party’s right to secure protection under this Order for such material.  
21 Upon timely correction of a designation, the Receiving Party must make reasonable  
22 efforts to assure that the material is treated in accordance with the provisions of this  
23 Order.

## 24 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

25 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
26 designation of confidentiality at any time that is consistent with the Court’s  
27 Scheduling Order.





(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this Action;

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the court and its personnel;

(e) court reporters and their staff;

(f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(h) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE  
PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection with this litigation is protected by the

1 remedies and relief provided by this Order. Nothing in these provisions should be  
2 construed as prohibiting a Non-Party from seeking additional protections.

3 (b) In the event that a Party is required, by a valid discovery request, to  
4 produce a Non-Party's confidential information in its possession, and the Party is  
5 subject to an agreement with the Non-Party not to produce the Non-Party's  
6 confidential information, then the Party shall:

7 (1) promptly notify in writing the Requesting Party and the Non-  
8 Party that some or all of the information requested is subject to a confidentiality  
9 agreement with a Non-Party;

10 (2) promptly provide the Non-Party with a copy of the Stipulated  
11 Protective Order in this litigation, the relevant discovery request(s), and a reasonably  
12 specific description of the information requested; and

13 (3) make the information requested available for inspection by the  
14 Non-Party.

15 (c) If the Non-Party fails to object or seek a protective order from this  
16 court within 14 days of receiving the notice and accompanying information, the  
17 Receiving Party may produce the Non-Party's confidential information responsive to  
18 the discovery request. If the Non-Party timely seeks a protective order, the  
19 Receiving Party shall not produce any information in its possession or control that is  
20 subject to the confidentiality agreement with the Non-Party before a determination  
21 by the court. Absent a court order to the contrary, the Non-Party shall bear the  
22 burden and expense of seeking protection in this court of its Protected Material.

23 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

24 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
25 Protected Material to any person or in any circumstance not authorized under this  
26 Stipulated Protective Order, the Receiving Party must immediately (a) notify in  
27 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts  
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1 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or  
2 persons to whom unauthorized disclosures were made of all the terms of this Order,  
3 and (d) request such person or persons to execute the “Acknowledgment and  
4 Agreement to Be Bound” that is attached hereto as Exhibit A.

5 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
6 PROTECTED MATERIAL

7 When a Producing Party gives notice to Receiving Parties that certain  
8 inadvertently produced material is subject to a claim of privilege or other protection,  
9 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil  
10 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure  
11 may be established in an e-discovery order that provides for production without prior  
12 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the  
13 parties reach an agreement on the effect of disclosure of a communication or  
14 information covered by the attorney-client privilege or work product protection, the  
15 parties may incorporate their agreement in the stipulated protective order submitted to  
16 the court.

17 12. MISCELLANEOUS

18 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
19 person to seek its modification by the court in the future.

20 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
21 Protective Order no Party waives any right it otherwise would have to object to  
22 disclosing or producing any information or item on any ground not addressed in this  
23 Stipulated Protective Order. Similarly, no Party waives any right to object on any  
24 ground to use in evidence of any of the material covered by this Protective Order.

25 12.3 Filing Protected Material. A Party that seeks to file under seal any  
26 Protected Material must comply with Civil Local Rule 79-5. Protected Material may  
27 only be filed under seal pursuant to a court order authorizing the sealing of the  
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specific Protected Material at issue. If a Party's request to file Protected Material under seal is denied by the court, then the Receiving Party may file the information in the public record unless otherwise instructed by the court.

13. FINAL DISPOSITION

After the final disposition of this Action, as defined in paragraph 4, within 60 days of a written request by the Designating Party, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

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14. Any violation of this Order may be punished by any and all appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

FOR GOOD CAUSE  
SHOWN, IT IS ORDERED

Dated: 1/16/19



Hon. Kenly Kiya Kato  
United States Magistrate Judge

**EXHIBIT A**  
**AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare  
under penalty of perjury that I have read in its entirety and understand the  
Protective Order that was issued by the United States District Court for the Central  
District of California on \_\_\_\_\_ [date] in the case of  
William Hanan v. BMW Financial Services NA, LLC, Case No. 5:18-cv-01711-  
RSWL-KK. I agree to comply with and to be bound by all the terms of this  
Protective Order, and I understand and acknowledge that failure to so comply  
could expose me to sanctions and punishment for contempt. I solemnly promise  
that I will not disclose in any manner any information or item that is subject to this  
Protective Order to any person or entity except in strict compliance with this Order.

I further agree to submit to the jurisdiction of the United States District  
Court for the Central District of California for the purpose of enforcing this Order,  
even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of  
\_\_\_\_\_ [print or type full address and  
telephone number] as my California agent for service of process in connection with  
this action or any proceedings related to enforcement of this Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_  
[printed name]

Signature: \_\_\_\_\_  
[signature]